

claims against respondent for any injury up to the date of the settlement hearing including the alleged injury of June 11, 1997, when claimant was rolling the tarp.

The record shows that the settlement hearing of August 28, 1997, concerned a claim with Docket No. 211,390. That docketed claim alleged injury to claimant's right shoulder and neck from a truck accident on September 7, 1995. As a result of this prior injury, claimant underwent surgery to his shoulder by Dr. Mark Maguire and to his neck by Dr. Beatty. He was off work for more than one year before returning to work for respondent in 1996.

Claimant filed the current claim in July 1997. At the settlement hearing on August 28, 1997, respondent described the settlement as follows:

All issues are resolved by this payment and all claims of the claimant with the employer up through today's date including those listed in the Form 12, nature and extent of disability, medical treatment, future medical treatment, review and modification, trial and submission of evidence to an Administrative Law Judge, and appeal rights.

The Special ALJ conducting the settlement hearing asked claimant if he understood he was giving up his right to any additional medical treatment. Claimant answered that he did understand.

At the preliminary hearing in this case, the transcript of the previous settlement hearing was not available. Claimant's counsel advised the ALJ, however, that the parties to the settlement understood claimant intended to continue to pursue the claim for the June 11, 1997, injury. According to claimant's counsel, this fact was discussed by the parties prior to the settlement. Respondent points out the settlement transcript, which was submitted to the ALJ after the hearing, does not show any agreement that the current claim would be pursued.

As indicated, respondent described the settlement, in the settlement hearing, as a settlement of all claims to date. This general language conflicts with the specific language of the settlement which refers only to the September 7, 1995, injury. The Board concludes the settlement which mentions specifically only the September 7, 1995, injury and Docket No. 211,390 did not, by general language, sweep in another docketed claim for another alleged date of accident. The attached worksheet for settlement refers only to Docket No. 211,390 and to a date of accident of only September 7, 1995. The medical report attached to the settlement (required by K.A.R. 51-3-9) evaluates only the September 7, 1995, injuries. No mention is made in the worksheet, in the settlement hearing, or in the medical report of an accident of June 11, 1997, or of Docket No. 223,984, the current claim. Under these circumstances, the Board finds the specific reference to one docket number and one date of accident in the settlement controls. In spite of other general language, the settlement should not be construed to include the

current claim. See Desbien v. Penokee Farmers Union Cooperative Association, 220 Kan. 358, 552 P.2d 917 (1976).

Although respondent raised other issues at the time of the preliminary hearing, specifically whether claimant gave proper notice and whether claimant suffered an accident on June 11, 1997, those other issues have not been raised on appeal.

WHEREFORE, the Appeals Board finds the order by Administrative Law Judge Robert H. Foerschler, dated October 16, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

c: Mark D. Chuning, Kansas City, MO
William W. Hutton, Kansas City, KS
Karen D. Pendland, Kansas City, MO
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director